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UNITED STATES DISTRICT OF COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

JUDGE'S COPY

APR 11 1998
MICHAEL W. DOBBS, CLERK
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA and)
PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiffs,)
)
v.)
)
CITY OF ROCKFORD, ILLINOIS,)
)
Defendant.)
_____)

CIVIL ACTION NO.

98-00026

CONSENT DECREE

CONSENT DECREE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA and
PEOPLE OF THE STATE OF ILLINOIS,

Plaintiffs,

v.

CITY OF ROCKFORD,

Defendant.

CIVIL ACTION NO.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), filed a complaint in this matter against the City of Rockford ("City"), pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia:

- (1) reimbursement of costs incurred by U.S. EPA and the Department of Justice for response actions at the Southeast Rockford Groundwater Superfund Site in Rockford, Illinois, together with accrued interest, including extensions and improvements to the water distribution system of the City; and
- (2) performance of studies and response work at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. The State of Illinois (the "State") on behalf of the Illinois Environmental Protection Agency ("Illinois EPA") is also a plaintiff pursuant to 415 ILCS 5/22.2 in the complaint.

D. The City has determined to finance its payment and performance obligations under this Consent Decree by issuing Water Revenue Alternate Bonds. The proceeds of the Water Revenue Alternate Bonds will be used for the work described herein, including monitoring of groundwater and improvements to the water distribution system of the City.

E. The City does not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, U.S. EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989, 54 Fed. Reg. 13,296.

G. In response to a release or a substantial threat of a release of hazardous substance(s) at or from the Site, U.S. EPA and Illinois EPA commenced in 1991, an RI/FS for what is now known as the Second Operable Unit at the Site pursuant to 40 C.F.R. § 300.430.

H. U.S. EPA and Illinois EPA completed a RI Report in February 1995, and U.S. EPA and Illinois EPA issued a FS Report

in July 1995 for the Second Operable Unit at the Site.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA published notice of the completion of the FS and of the proposed plan for remedial action for the Second Operable Unit on July 10, 1995 in a major local newspaper of general circulation. U.S. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by U.S. EPA on the remedial action to be implemented for the Second Operable Unit at the Site is embodied in a final ROD ("ROD" or "Second Operable Unit ROD"), executed on September 29, 1995, on which Illinois EPA has given its concurrence. The Second Operable Unit ROD includes U.S. EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. Based on the information presently available to U.S. EPA and Illinois EPA, U.S. EPA and Illinois EPA believe that the Work will be properly and promptly conducted by the City if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, the

Remedial Action selected by the ROD and the Work to be performed by the City shall constitute a response action taken or ordered by the President.

M. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, U.S. EPA previously conducted a Remedial Investigation and Feasibility Study and selected remedial action to be implemented for what is now known as the First Operable Unit at the Site as embodied in a final Record of Decision ("First Operable Unit ROD"), executed on June 14, 1991 on which Illinois EPA has given its concurrence. U.S. EPA implemented the remedial action selected in the First Operable Unit ROD.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the City. Solely for the purposes of this Consent Decree and the underlying complaint, the City waives all

objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The City shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the State and upon the City.

3. The City shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing the City with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. The City or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. The City shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the City within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in

regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply.

"ATSDR" shall mean the Agency For Toxic Substances and Disease Registry.

"ATSDR Costs" shall mean all past and future costs, including but not limited to direct and indirect costs, that ATSDR incurs in connection with Waste Material that is present in groundwater at the Site as of the date of lodging of this Consent Decree. ATSDR Costs shall include all past and future costs incurred in connection with the Rockford TCE Subregistry Project.

"Area 7 of the Site" shall mean the portion of the Site depicted generally on the map attached as Appendix D hereto.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"First Operable Unit ROD" or "ROD" shall mean the Record of

Decision dated June 14, 1991 for response action for the First Operable Unit at the Southeast Rockford Groundwater Contamination Site;(and attached hereto as Appendix A.)

"Future Oversight Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States and the State of Illinois incur in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Remedial Action and O&M, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs. Future Oversight Costs shall also include all costs, including direct and indirect costs, that the United States and the State of Illinois incur in connection with the lodging, public comment period, entry, or any court proceedings relating to the lodging and entry of this Consent Decree. Future Oversight Costs shall not include response costs incurred by U.S. EPA or Illinois EPA pursuant to Sections VII, XV, and Paragraph 85 of Section XXI, costs of Illinois EPA in routine regulation of the public water supply of the City pursuant to 415 ILCS 5/14 through 19, or any costs in connection with (1) Soil, Sediment, and Surface Response Action and Costs or (2) Reserved Groundwater Containment Response Action and Costs.

"Groundwater-Related Response Action and Costs" shall mean response action to be taken and response costs incurred or to be incurred to address a release, or threat of release, of a hazardous Substance in groundwater at the Site. Groundwater-

Related Response Action and Costs does not include (1) Soil, Sediment, and Surface Response Action and Costs and (2) Reserved Groundwater Containment Response Action and Costs.

"Illinois EPA" shall mean the Illinois Environmental Protection Agency and any successor departments or agencies of the State.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, pursuant to this Consent Decree and the Statement of Work (SOW).

"Paragraph" or "subparagraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

"Parties" shall mean the United States, the State of Illinois, and the City.

"Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs and interest that the United States and the State of Illinois have incurred and paid with regard to the Site prior to the lodging of this Consent Decree.

"Plaintiffs" shall mean the United States and the State of Illinois.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"RD/RA Work Plan" shall mean the document developed pursuant to Paragraph 10 of this Consent Decree and approved by U.S. EPA, and any amendments thereto.

"ROD" shall mean the Second Operable Unit ROD.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the City to implement the ROD, in accordance with the SOW and the final RD/RA Work Plan and other plans approved by U.S. EPA after reasonable opportunity for review and comment by Illinois EPA.

"Remedial Design" shall mean those activities to be undertaken by the City to develop the final plans and specifications for the Remedial Action pursuant to the RD/RA Work Plan.

"Reserved Groundwater Containment Response Action and Costs" shall mean response action to be taken and response costs to be incurred for groundwater containment at areas that are sources of

contamination in the groundwater at the Site, excluding Area 7 of the Site, in order to contain or control releases or threats of releases of hazardous substances from such areas. Any response costs within the definition of "Reserved Groundwater Containment Response Action and Costs" that were incurred prior to the date of lodging of this Decree are included in Past Response Costs.

"Second Operable Unit ROD" shall mean the Record of Decision dated September 29, 1995 for response action for the Second Operable Unit at the Southeast Rockford Groundwater Contamination Site and attached hereto as Appendix A.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Site" or "Southeast Rockford Site" shall mean the Southeast Rockford Groundwater Contamination Site as defined in the ROD and any migration of hazardous substances therefrom, provided, however, that the Site shall not in any event include the Interstate Pollution Control Site, which is depicted on the map attached hereto as Appendix B. The Site shall also include the Peoples Avenue Landfill located at Harrison Avenue and Seminary Street in Rockford, Illinois.

"Soil, Sediment, and Surface Response Action and Costs" means response action to be taken and response costs incurred or to be incurred to address a release, or threat of release, of a hazardous substance in soils, sediments, or surface media at the Site, excluding Area 7 of the Site.

"State" shall mean the State of Illinois.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix C to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the City to supervise and direct the implementation of the Work under this Consent Decree.

"U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) or 415 ILCS 5/3.14; (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities the City is required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are, without limitation, to protect public health or welfare or the environment at the Site by the design and

implementation of response actions at the Site by the City, to reimburse certain oversight costs of the Plaintiffs, to resolve the claims of Plaintiffs against the City set forth in the complaint as provided in this Consent Decree, and to obtain the covenants not to sue and contribution protection referred to herein.

6. Commitments By the City

The City shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by the City and approved by U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, pursuant to this Consent Decree and shall make the payments of Future Oversight Costs required by this Consent Decree.

7. Compliance With Applicable Law

All activities undertaken by the City pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The City must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, the City shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The City may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY THE CITY

9. Selection of Supervising Contractor

a. All aspects of the Work to be performed by the City pursuant to Sections VI (Performance of the Work by the City), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by U.S. EPA, after a reasonable opportunity for review and comment by Illinois EPA. The City has notified

Illinois EPA and U.S. EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor (who may be an employee of the City if otherwise qualified). U.S. EPA has or will issue a notice of disapproval or an authorization to proceed. If at any time the City proposes to change a Supervising Contractor, the City shall give such notice to Illinois EPA and U.S. EPA and must obtain an authorization to proceed from U.S. EPA, after a reasonable opportunity for review and comment by Illinois EPA, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If U.S. EPA disapproves a proposed Supervising Contractor, U.S. EPA will notify the City in writing. The City shall submit to Illinois EPA and U.S. EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of U.S. EPA's disapproval of the contractor previously proposed. U.S. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. The City may select any contractor from that list that is not disapproved and shall notify Illinois EPA and U.S. EPA of the name of the contractor selected within 21 days of U.S. EPA's authorization to proceed.

c. If U.S. EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the City from meeting one or

more deadlines in a plan approved by the Illinois EPA pursuant to this Consent Decree, the City may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

10. Remedial Design/Remedial Action.

a. The City shall submit to Illinois EPA and U.S. EPA work plans for the design and implementation of the Remedial Design/Remedial Action at the Site ("Remedial Design/Remedial Action Work Plan" or "RD/RA Work Plan") in accordance with the schedules in the SOW. The RD/RA Work Plan shall provide for design, construction, and implementation of the remedy set forth in the ROD, in accordance with the SOW and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, the RD/RA Work Plan shall be incorporated into and become enforceable under this Consent Decree. The City shall also submit to Illinois EPA and U.S. EPA, as an appendix to the RD/RA Work Plan, a Health and Safety Plan which conforms to the applicable Occupational Safety and Health Administration and Illinois EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The RD/RA Work Plan shall include plans and schedules for implementation of all remedial design and remedial action tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) location and installation of groundwater monitoring wells; (2) design and

implementation of a groundwater monitoring program; (3) operation and maintenance for the groundwater monitoring program and the granulated activated carbon treatment unit at City well #UW-35; and (4) sampling and analysis plan (including, but not limited to, a Quality Assurance Project Plan ("QAPP") in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)). In addition, the RD/RA Work Plan shall include a schedule for completion of the Remedial Action.

c. Upon approval of the RD/RA Work Plan by U.S. EPA, after a reasonable opportunity for review and comment by Illinois EPA, and submittal of the Health and Safety Plan for all field activities to Illinois EPA, the City shall implement the RD/RA Work Plan. The City shall submit to Illinois EPA and U.S. EPA all plans, submittals and other deliverables required under the approved RD/RA Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (U.S. EPA Approval of Plans and Other Submissions). Unless otherwise directed by U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, the City shall not commence further Remedial Design/Remedial Action activities at the Site prior to approval of the RD/RA Work Plan.

11. The City shall continue to implement the Remedial Action and perform Operation and Maintenance until U.S. EPA and Illinois EPA issue a Certificate of Completion for Work, as provided by Paragraph 46 of this Consent Decree.

12. Modification of the SOW or Related Work Plans.

a. If U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to carry out and maintain the effectiveness of the remedy set forth in the ROD, U.S. EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy described and selected in the ROD.

b. If the City objects to any modification determined by U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 61 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

c. The City shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

d. Nothing in this Paragraph shall be construed to limit U.S. EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

13. The City shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, which is related in any way to the Work performed by

the City pursuant to this Consent Decree, provide written notification to the appropriate state environmental official in the receiving facility's state and to the Illinois EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The City shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The City shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the City following the award of the contract for Remedial Action construction. The City shall provide the information required by Paragraph 13.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

14. Periodic Review. The City shall conduct any studies and investigations as requested by U.S. EPA, consistent with

Section 121(c) of CERCLA and any applicable regulations, in order to permit U.S. EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

15. U.S. EPA Selection of Further Response Actions. If U.S. EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, after reasonable opportunity for review and comment by Illinois EPA, U.S. EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

16. Opportunity To Comment. The City and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by U.S. EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

17. The City's Obligation To Perform Further Response Action. If U.S. EPA selects further response actions for the Site with respect to the Remedial Action in accordance with Paragraph 15, the City shall undertake such further response actions to the extent that (and shall be so required only to the extent that) the reopener conditions in Paragraphs 77-82 (United States' and State's reservations of liability based on unknown conditions or new information) are satisfied. Prior to undertaking such further response actions, the City may invoke

the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) U.S. EPA's determination that the reopener conditions of Paragraphs 77-82 of Section XXI (Covenants Not To Sue by Plaintiffs) are satisfied, (2) U.S. EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) U.S. EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to U.S. EPA's selection of further response actions shall be resolved pursuant to Paragraph 61 (record review).

18. Submissions of Plans. If the City is required to perform further response actions pursuant to Paragraph 15 it shall submit a plan for such work to U.S. EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by The City) and shall implement the plan approved by U.S. EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

19. The City shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA/600/9-88/087), and subsequent amendments to such guidelines upon notification by U.S. EPA to the City of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of

any monitoring project under this Consent Decree, the City shall submit to Illinois EPA for approval, after a reasonable opportunity for review and comment by U.S. EPA, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP and reviewed and approved by Illinois EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. The City shall ensure that Illinois EPA and U.S. EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by the City in implementing this Consent Decree. In addition, the City shall use reasonable best efforts to ensure that such laboratories shall analyze all samples submitted by Illinois EPA or U.S. EPA pursuant to the QAPP for quality assurance monitoring. The City shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted U.S. EPA methods. Accepted U.S. EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. The City shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an U.S. EPA or U.S. EPA-

equivalent QA/QC program. The City shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by Illinois EPA.

20. Upon request, the City shall allow split or duplicate samples to be taken by Illinois EPA and U.S. EPA or their authorized representatives. The City shall notify Illinois EPA and U.S. EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by Illinois EPA. In addition, Illinois EPA and U.S. EPA shall have the right to take any additional samples that Illinois EPA or U.S. EPA deem necessary. Upon request, Illinois EPA and U.S. EPA shall allow the City to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the City's implementation of the Work.

21. The City shall submit to Illinois EPA and U.S. EPA two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the City with respect to the Site and/or the implementation of this Consent Decree unless Illinois EPA agrees otherwise.

22. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS

23. Commencing upon the date of lodging of this Consent Decree, the City agrees, upon reasonable advance notice to the extent practicable based on the reason access is needed and site conditions, to provide the United States, the State, and their representatives, including U.S. EPA and its contractors, access at all reasonable times to the portion(s) of the Site (and any other property in close proximity to the Site to which access is necessary for the implementation of this Consent Decree) that it respectively owns or controls to which access is necessary for implementation of this Consent Decree. Access under this Consent Decree is necessary for:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States or the State pursuant to this Consent Decree;
- c. Conducting investigations relating to contamination at or near the Site related to the ROD;
- d. Obtaining samples pursuant to this Consent Decree;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site with respect to the ROD in accordance with Paragraphs 12 or 15 of this Consent Decree;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the City or their agents, consistent with Section XXIV; and
- g. Assessing the City's compliance with this Consent

Decree.

24. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than the City, the City shall use best efforts to secure from such persons access for the City, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date U.S. EPA notifies the City in writing that additional access beyond that previously secured is necessary, the City shall promptly notify the United States in writing, and shall include in that notification a summary of the steps the City has taken to attempt to obtain access. The United States or the State may, as it deems appropriate, assist the City in obtaining access.

25. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

26. In addition to any other requirement of this Consent Decree, the City shall submit to Illinois EPA and U.S. EPA two copies of written quarterly progress reports that: (a)

describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous quarter; (b) include a summary of all results of sampling and tests and all other data received or generated by the City or their contractors or agents in the previous quarter; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous quarter; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that the City has proposed to U.S. EPA or that have been approved by U.S. EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous quarter and those to be undertaken in the next six weeks. The City shall submit these progress reports to Illinois EPA and U.S. EPA by the 10th day of every October, January, April, and July following the lodging of this Consent Decree until U.S. EPA notifies the City pursuant to Paragraph 45.b of Section XIV (Completion of the Remedial Action). If requested by Illinois EPA or U.S. EPA, the City

shall also provide briefings for Illinois EPA and U.S. EPA to discuss the progress of the Work. After the Completion of the Remedial Action, the City shall submit progress reports to Illinois EPA and U.S. EPA annually upon the anniversary of the date of the Certification of Completion of the Remedial Action until U.S. EPA and Illinois EPA provide the City with a Certification of the Completion of the Work pursuant to Paragraph 46.b.

27. The City shall notify U.S. EPA and Illinois EPA of any change in the schedule described in the quarterly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

28. Upon the occurrence of any event during performance of the Work that the City is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), the City shall, within 24 hours of the onset of such event, orally notify the Illinois EPA Project Coordinator or the Alternate Illinois EPA Project Coordinator (in the event of the unavailability of the Illinois EPA Project Coordinator), or, in the event that neither the Illinois EPA Project Coordinator or Alternate Illinois EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

29. Within 20 days of the onset of such an event, the City shall furnish to Plaintiffs a written report, signed by the City's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, the City shall submit a report setting forth all actions taken in response thereto.

30. The City shall submit two copies of all plans, reports, and data required by the SOW, the Remedial Design/Remedial Action Work Plan, or any other approved plans to Illinois EPA in accordance with the schedules set forth in such plans. The City shall simultaneously submit two copies of all such plans, reports and data to U.S. EPA.

31. All reports and other documents submitted by the City to Illinois EPA (other than the quarterly progress reports referred to above) which purport to document the City's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the City.

XI. U.S. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

32. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing

that the City modify the submission; or (e) any combination of the above. However, U.S. EPA shall not modify a submission without first providing the City at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

33. In the event of approval, approval upon conditions, or modification by U.S. EPA, pursuant to Paragraph 32(a), (b), or (c), the City shall proceed to take any action required by the plan, report, or other item, as approved or modified by U.S. EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by U.S. EPA. In the event that U.S. EPA modifies the submission to cure the deficiencies pursuant to Paragraph 32 and the submission has a material defect, U.S. EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

34. a. Upon receipt of a notice of disapproval pursuant to Paragraph 32(d), the City shall, within 30 days or such longer time as specified by U.S. EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-day period

or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 35 and 36.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 32(d), the City shall proceed, at the direction of U.S. EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the City of any liability for stipulated penalties under Section XX (Stipulated Penalties).

35. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by U.S. EPA, U.S. EPA may again require the City to correct the deficiencies, in accordance with the preceding Paragraphs. U.S. EPA also retains the right to modify or develop the plan, report or other item. The City shall implement any such plan, report, or item as modified or developed by U.S. EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

36. If upon resubmission, a plan, report, or item is disapproved or modified by U.S. EPA due to a material defect, the City shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the City invokes the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and U.S. EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and

Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If U.S. EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

37. All plans, reports, and other items required to be submitted under this Consent Decree shall, upon approval or modification by U.S. EPA, be enforceable under this Consent Decree. In the event U.S. EPA approves or modifies a portion of a plan, report, or other item required to be submitted to U.S. EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

38. Within 20 days of lodging this Consent Decree, the City, U.S. EPA and Illinois EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The City's Project Coordinator shall be subject to disapproval by U.S. EPA and shall have the technical expertise sufficient to adequately

oversee all aspects of the Work. The City's Project Coordinator shall not be an attorney for the City in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

39. Plaintiffs may designate other representatives, including, but not limited to, U.S. EPA and Illinois EPA employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. U.S. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, U.S. EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, upon written notification of the City where practical and oral notification otherwise, to halt any Work required by this Consent Decree. U.S. EPA's Project Coordinator or Alternate Project Coordinator shall also have authority to take any necessary response action when he or she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material. U.S. EPA shall notify the City that it has taken such action as soon as practicable.

40. U.S. EPA's Project Coordinator and the City's Project

Coordinator will meet, at a minimum, on a monthly basis, unless the Parties agree otherwise in writing.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

41. Within 30 days of entry of this Consent Decree, the City shall establish and maintain financial security in the amount of \$3,000,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund; or
- d. By July 1 of each year, the City shall certify to the United States and the State that the City's independently audited financial statements demonstrate that the City has:

(1) (a) Authority to levy additional property taxes for its Corporate Fund pursuant to 65 ILCS 5/8-3-1 in the amount of the estimated cost of the remaining work to be performed under this Decree, without exceeding the levy limit on the Corporate Fund; or (b) Total revenues of the City-Owned Waterworks System exceed total operation and maintenance costs plus maximum annual debt service under outstanding revenue bonds and bonds issued at market rates sufficient to pay the estimated cost of the remaining work to be performed

under this Decree by 125%; and

(2) The City has received a bond rating of A or better from Moody's or an equivalent bond rating from another nationally recognized rating service within the prior 18 months; and

(3) The City has not exceeded 80% of its statutory debt limit established pursuant to 65 ILCS 5/8-5-1.

42. In the event that U.S. EPA, after a reasonable opportunity for review and comment by Illinois EPA, determines at any time that the financial assurances provided pursuant to this Section are inadequate, the City shall, within 30 days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed in Paragraph 41 of this Consent Decree. The City's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

43. If the City can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 41 above after entry of this Consent Decree, the City may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. The

City shall submit a proposal for such reduction to U.S. EPA and Illinois EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA. In the event of a dispute, the City may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

44. The City may change the form of financial assurance provided under this Section at any time, upon notice to and approval by U.S. EPA after reasonable opportunity for review and comment by Illinois EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, the City may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

45. Completion of the Remedial Action

a. Within 30 days after the City concludes that the Remedial Action has been fully performed, the City shall schedule and conduct a pre-certification inspection to be attended by the City, U.S. EPA, and Illinois EPA. If, after the pre-certification inspection, the City still believes that the Remedial Action has been fully performed, it shall submit a written report requesting certification to U.S. EPA for approval, with a copy to Illinois EPA, pursuant to Section XI (U.S. EPA Approval of Plans and Other Submissions) within 30 days of the

inspection. In the report, a registered professional engineer and the City's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible City official or the City's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, U.S. EPA, after reasonable opportunity to review and comment by Illinois EPA, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree, U.S. EPA will notify the City in writing of the activities that must be undertaken by the City pursuant to this Consent Decree to complete the Remedial Action. U.S. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the City to submit a schedule to U.S. EPA for approval pursuant to Section XI (U.S. EPA Approval of Plans and Other Submissions). The City shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this

Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If U.S. EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by Illinois EPA, that the Remedial Action has been performed in accordance with this Consent Decree, U.S. EPA will so certify in writing to the City. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect the City's obligations under this Consent Decree.

46. Completion of the Work

a. Within 30 days after the City concludes that all phases of the Work (including O & M), have been fully performed, the City shall schedule and conduct a pre-certification inspection to be attended by the City, U.S. EPA, and Illinois EPA. If, after the pre-certification inspection, the City still believes that the Work has been fully performed, the City shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible City official or the City's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained

in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, U.S. EPA or Illinois EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree, either may notify the City in writing of the activities that must be undertaken by the City pursuant to this Consent Decree to complete the Work. U.S. EPA or Illinois EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the City to submit a schedule to U.S. EPA for approval pursuant to Section XI (U.S. EPA Approval of Plans and Other Submissions). The City shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If U.S. EPA and Illinois EPA conclude, based on the initial or any subsequent request for Certification of Completion by the City, that the Work has been performed in accordance with this Consent Decree, they will so notify the City in writing.

XV. EMERGENCY RESPONSE

47. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or

welfare or the environment, the City shall, subject to Paragraph 48, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the City shall notify the EPA Superfund Emergency Response Unit, Region V. The City shall also immediately notify the State's Project Coordinator. The City shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and the State's Project Coordinator and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that the City fails to take appropriate response action as required by this Section, and U.S. EPA or, as appropriate, Illinois EPA takes such action instead, the City shall reimburse U.S. EPA and Illinois EPA all costs of the response action not inconsistent with the NCP.

48. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State, a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize

an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiffs).

XVI. PAYMENTS

49.a. (i) The City shall reimburse the EPA Hazardous Substance Superfund and the State for all Future Oversight Costs not inconsistent with the National Contingency Plan up to a maximum amount of \$100,000 (plus accumulated interest in the escrow account established pursuant to Paragraph 49.b) prior to U.S. EPA's Certification of Completion of Remedial Action pursuant to Paragraph 45.b and up to an additional \$100,000 (plus accumulated interest in the escrow account established pursuant to Paragraph 49.b) between the time of U.S. EPA's Certification of Completion of Remedial Action and U.S. EPA's and Illinois EPA's Certification of Completion of Work pursuant to Paragraph 46.b. The United States and the State will send the City bills requiring payment that include an itemized cost summary, which includes direct and indirect costs incurred by U.S. EPA and its contractors. The City shall make all payments within 30 days of the City's receipt of each bill requiring payment, except as otherwise provided in subparagraph 49.b(ii) below. The City shall make all payments to the United States required by this Paragraph in the form of a certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #05DK, and DOJ case number 90-11-3-945. The City shall send the check(s) to U.S. EPA, Region

V, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673 and shall send copies of the check(s) and transmittal letter(s) to the United States and the State as specified in Section XXVI (Notices and Submissions). Payments to the State under this Paragraph shall be made in the form of a certified check made payable to the Treasurer of the State of Illinois, designated to the Hazardous Waste Fund, and submitted to Illinois Environmental Protection Agency, Fiscal Services Section, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, IL 62794-9276. The name and number of this case and the City's Federal Employees Identification Number shall appear on the face of the check. The City shall also send a copy of the check and transmittal letter to the State as specified in Section XXXVI (Notices and Submissions). Copies of all check(s) and transmittal letter(s) under this Paragraph shall be sent to the United States and the State as specified in Section XXVI (Notice and Submissions).

(ii) The City may contest payment of any Future Oversight Costs under Paragraph 49.a(i) if it determines that the United States or the State, as applicable, has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically

identify the contested Future Oversight Costs and the basis for objection. In the event of an objection, the City shall within the 30 day period pay all uncontested Future Oversight Costs to the United States or the State in the manner described in Paragraph 49.a(i). The City shall within 30 days of receipt of the bill initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States (or the State, as applicable) prevails in the dispute, within 5 days of the resolution of the dispute, the City shall pay the sums due (with accrued interest) to the United States or the State, if State costs are disputed, in the manner described in Paragraph 49.b(1). If the City prevails concerning any aspect of the contested costs, the City shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States or the State, if State costs are disputed in the manner described in Paragraph 49.a(i). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the City's obligation to reimburse the United States and the State for their Future Oversight Costs.

b. Within 30 days after the Court's entry of this Consent Decree, the City shall place \$100,000 into an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Illinois for the payment of Future Oversight Costs in accordance with Paragraph 49.a. The City shall send to

the United States, as provided in Section XXVI (Notices and Submissions), and the State a copy of the transmittal letter and check, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Within 30 days of U.S. EPA's Certification of Completion of Remedial Action pursuant to Paragraph 45.b, the City shall remit to the escrow account sufficient funds so that the balance in the escrow account is again \$100,000 and shall provide copies as described above. At any time after five years from the Certification of Completion of Remedial Action, the City may petition U.S. EPA and Illinois EPA for permission to reduce the amount in the escrow account to correspond to U.S. EPA's and Illinois EPA's then estimated amount for Future Oversight Costs. In the event of a dispute, the City may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

c. In the event that the City fails to make any payment required by Section XVI within the time required by this Consent Decree, the City shall pay additional Interest on the unpaid balance. Additional Interest shall accrue through the date of the City's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of the City's failure

to make timely payments under this Section. The City shall make all payments required by this Paragraph in the manner described in Paragraph 49.a(i).

XVII. INDEMNIFICATION AND INSURANCE

50. a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of the City as U.S. EPA's authorized representative under Section 104(e) of CERCLA. The City shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the City, its officers, directors, employees, agents, contractors, subcontractors, and any persons authorized by the City to act on its behalf, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of the City as U.S. EPA's authorized representatives under Section 104(e) of CERCLA. Further, the City agrees to pay the United States and the State all costs that they incur, including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of the City, its officers, directors, employees, agents, contractors, subcontractors, and any persons

authorized by the City to act on its behalf, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of the City in carrying out activities pursuant to this Consent Decree. Neither the City nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give the City notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 50.a., and shall consult with the City prior to settling such claim.

51. The City waives all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between the City and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the City shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the City and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

52. No later than 15 days before commencing any on-site Work, the City shall secure, and shall maintain until the first

anniversary of U.S. EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 45.b. of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of three million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree, the City shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of the City in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, the City shall provide to U.S. EPA and Illinois EPA certificates of such insurance and, upon further written request, a copy of each insurance policy. The City shall resubmit such certificates and, upon further written request, copies of policies each year on the anniversary of the effective date of this Consent Decree. If the City demonstrates by evidence satisfactory to U.S. EPA and Illinois EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, the City need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

53. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the City, of any entity controlled by the City, or of the City's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the City's best efforts to fulfill the obligation. The requirement that the City exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work.

54. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the City shall notify orally Illinois EPA's Project Coordinator and U.S. EPA's Project Coordinator or, in his or her absence, U.S. EPA's Alternate Project Coordinator or, in the event both of U.S. EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 72 hours of when the City first knew that the event might cause a delay. Within 15 days thereafter, the City shall provide in writing to U.S. EPA and Illinois EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions

taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The City shall be deemed to know of any circumstance of which the City, including any departments or agencies of the City, or City's contractors knew or should have known.

55. If U.S. EPA, after a reasonable opportunity for review and comment by Illinois EPA, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by U.S. EPA, after a reasonable opportunity for review and comment by Illinois EPA, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend

the time for performance of any other obligation. If U.S. EPA, after a reasonable opportunity for review and comment by Illinois EPA, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, U.S. EPA will notify the City in writing of its decision. If U.S. EPA, after a reasonable opportunity for review and comment by Illinois EPA, agrees that the delay is attributable to a force majeure event, U.S. EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

56. If the City elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), it shall do so no later than 15 days after receipt of U.S. EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs 53 and 54 above. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to U.S. EPA and the Court.

XIX. DISPUTE RESOLUTION

57. Unless otherwise expressly provided for in this Consent

Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between U.S. EPA and the City or between Illinois EPA and the City arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the City that have not been disputed in accordance with this Section.

58. (a) Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, except as provided by subparagraph b below or unless the parties to the dispute agree in writing to a longer period. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

(b) Within ten (10) days of the filing of an Informal Notice of Dispute, the United States, the State, or the City may, by providing notice in writing, request the employment of a neutral mediator. Any mediation shall not last longer than forty-five (45) days from the filing of the Informal Notice of Dispute unless extended by written agreement. As applicable, the United States and the City, or the State and the City, will divide equally the fees and costs of the mediator. Each party to the dispute will provide a list of five suggested mediators who shall have the qualifications of (a) demonstrated experience, (b)

independence, (c) subject matter experience, and (d) lack of actual or apparent bias. The parties to the dispute shall inform each other of all mediators that are acceptable and the parties to the dispute shall then select a mediator. Any report, findings, recommendations, written records, or notes prepared by the mediator shall not be binding on any party and shall not be part of the administrative record or admissible in dispute resolution proceedings or any other legal proceeding. Nothing in this Paragraph shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1511-1519.

59. Disputes Between the City and U.S. EPA. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by U.S. EPA, after reasonable opportunity for review and comment by the State, shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, the City invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the City. The Statement of Position shall specify the City's position as to whether formal dispute resolution should proceed under Paragraph 61 or 62.

a. Within 30 days after receipt of the City's Statement of

Position, U.S. EPA, after reasonable opportunity for review and comment by the State, will serve on the City its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by U.S. EPA. The State, after reasonable opportunity for review and comment by U.S. EPA, may also serve a Statement of Position within the time limit set forth above in this Paragraph. U.S. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 61 or 62. Within 20 days after receipt of U.S. EPA's Statement of Position, the City may submit a Reply.

b. If there is disagreement between U.S. EPA and the City as to whether dispute resolution should proceed under Paragraph 61 or 62, the parties to the dispute shall follow the procedures set forth in the paragraph determined by U.S. EPA to be applicable. However, if the City ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 61 and 62.

60. Disputes Between The City and Illinois EPA. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by Illinois EPA, after reasonable opportunity for review and comment by U.S. EPA, shall be considered binding unless, within 15 days after the conclusion of the informal negotiation

period, the City invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the City. The Statement of Position shall specify the City's position as to whether formal dispute resolution should proceed under Paragraph 61 or 62.

b. Within 30 days after receipt of the City's Statement of Position, Illinois EPA, after reasonable opportunity for review and comment by U.S. EPA, will serve on the City its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by Illinois EPA. U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, may also serve a Statement of Position within the time limit set forth in this Paragraph. Illinois EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 61 or 62. Within 15 days after receipt of Illinois EPA's Statement of Position, the City may submit a Reply.

c. If there is disagreement between Illinois EPA and the City as to whether dispute resolution should proceed under Paragraph 61 or 62, the parties to the dispute shall follow the procedures set forth in the paragraph determined by Illinois EPA to be applicable. However, if the City ultimately appeals to the

Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 61 and 62.

61. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by U.S. EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by the City regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by U.S. EPA or Illinois EPA, as applicable, and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, U.S. EPA or Illinois EPA, as applicable, may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, U.S. EPA Region 5, or the Chief of the Illinois EPA Bureau of Land, as applicable, after reasonable opportunity for review and comment

by U.S. EPA or Illinois EPA, as applicable, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 61.a. This decision shall be binding upon the City, subject only to the right to seek judicial review pursuant to Paragraph 61.c. and d.

c. Any administrative decision made by U.S. EPA or Illinois EPA, as applicable, pursuant to Paragraph 61.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the City with the Court and served on all Parties within 20 days of receipt of U.S. EPA's or Illinois EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States or the State may file a response to the City's motion.

d. In proceedings on any dispute governed by this Paragraph, the City shall have the burden of demonstrating that the decision of the Superfund Division Director, or the Chief of the Illinois EPA Bureau of Land, is arbitrary and capricious or otherwise not in accordance with law. Judicial review of U.S. EPA's or Illinois EPA's decision shall be on the administrative record compiled pursuant to Paragraph 61.a.

62. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under

applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of the City's Statement of Position submitted pursuant to Paragraphs 59 or 60, the Director of the Superfund Division, EPA Region 5, the Chief of the Illinois EPA Bureau of Land, as applicable, after reasonable opportunity for review and comment by U.S. EPA or Illinois EPA, as applicable, will issue a final decision resolving the dispute. The Superfund Division Director's, or the Chief of the Illinois EPA Bureau of Land, decision shall be binding on the City unless, within 10 days of receipt of the decision, the City files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States or the State may file a response to the City's motion.

b. Notwithstanding Paragraph L of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

63. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the City under this Consent Decree, not directly in dispute, unless U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, or the Court

agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 68. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

64. The City shall be liable for stipulated penalties in the amounts set forth in Paragraphs 65 and 66 to the United States and State, the amount to be paid half (50%) to each, for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by the City shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by U.S. EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

65. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 to 30 days
\$2,000	31 to 60 days
\$3,000	over 60 days

b. The dates prescribed in this Consent Decree for completion of the following milestones will provide the basis for determining noncompliance under this Paragraph of this Consent Decree: (1) Failure to submit the RD/RA Work Plan; (2) Failure to comply with any schedule contained in the approved RD/RA Work Plan; (3) Failure to install the required groundwater monitoring wells; (4) Failure to implement the groundwater monitoring program; (5) Failure to conduct operations and maintenance for the groundwater monitoring program and the granulated activated carbon treatment unit at city well # UW-35; (6) Failure to comply with notice or other requirements of this Consent Decree; and (7) Failure to take action to abate an endangerment under Section XV of this Consent Decree.

66. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Section X (Reporting Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 to 30 days
\$1,000	31 to 60 days
\$1,500	over 60 days

67. In the event that U.S. EPA or Illinois EPA assumes

performance of a portion or all of the Work pursuant to Paragraph 85 of Section XXI (Covenants Not to Sue by Plaintiffs), the City shall be liable for a stipulated penalty in the amount of \$25,000.

68. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (U.S. EPA Approval of Plans and Other Submissions) during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies the City of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, U.S. EPA Region 5, under Paragraph 61.b. or 62.a. of Section XIX (Dispute Resolution) during the period, if any, beginning on the 21st day after the date that the City's reply to U.S. EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution) during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

69. Following U.S. EPA's determination, after a reasonable opportunity for review and comment by the Illinois EPA, that the City has failed to comply with a requirement of this Consent Decree, U.S. EPA may give the City written notification of the same and describe the noncompliance. U.S. EPA, or U.S. EPA and the State jointly, may send the City a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified the City of a violation.

70. All penalties accruing under this Section shall be due and payable to the United States and the State within 30 days of the City's receipt from U.S. EPA of a demand for payment of the penalties, unless the City invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Superfund Accounting, P.O. Box 70753, Chicago, Illinois, 60673, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Region and Site/Spill ID #05DK, the DOJ Case Number 90-11-3-945, and the name and address of the party making payment. All payments to the State under this Section shall be paid by certified check payable to the Treasurer of the State of Illinois, designated to the Hazardous Waste Fund, and submitted to Illinois Environmental Protection Agency, Fiscal Services Section, 1021 North Grand

Avenue East, P.O. Box 19276, Springfield, IL 62794-9276. The check shall indicate the name and number of this case and the City's Federal Employer Identification Number. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States and the State as provided in Section XXVI (Notices and Submissions).

71. The payment of penalties shall not alter in any way the City's obligation to complete the performance of the Work required under this Consent Decree.

72. Penalties shall continue to accrue as provided in Paragraph 68 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of U.S. EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to U.S. EPA and the State within 15 days of the agreement or the receipt of U.S. EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, the City shall pay all accrued penalties determined by the Court to be owed to U.S. EPA and the State within 60 days of receipt of the Court's decision or order, except as provided in subparagraph c below;

c. If the District Court's decision is appealed by any Party, the City shall pay all accrued penalties determined by the District Court to be owing to the United States or the State into an interest-bearing escrow account within 60 days of receipt

of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to U.S. EPA and the State or to the City to the extent that they prevail.

73. a. If the City fails to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as Interest. The City shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 70.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of the City's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

74. Notwithstanding any other provision of this Section, the United States, after reasonable opportunity for review and comment by the State, may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

75. In consideration of the City's implementation of the Work and the payments that will be made pursuant to Paragraph 49 of this Consent Decree, and except as specifically provided in Paragraphs 76-82 of this Consent Decree, the United States and the State covenant not to sue or take administrative action against the City pursuant to sections 106 and 107(a) of CERCLA and section 7003 of RCRA and section 22.2 of the Illinois Environmental Protection Act for Groundwater-Related Response Action and Costs, Past Response Costs, Future Oversight Costs, and ATSDR Costs. Except with respect to liability for Groundwater-Related Response Action and Costs, Future Oversight Costs, and ATSDR Costs to be performed or incurred after the lodging of this Consent Decree, these covenants not to sue shall take effect upon the receipt by the United States and the State of evidence of the payment required by Paragraph 49.b of this Consent Decree. With respect to liability for Groundwater-Related Response Action and Costs, Future Oversight Costs, and ATSDR Costs to be performed or incurred after the lodging of this Consent Decree, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action pursuant to Paragraph 45 of this Consent Decree and receipt by the United States and the State of the payments required by Paragraphs 49.a of this Consent Decree. With respect to liability for Groundwater-Related Response Action and Costs, Future Oversight Costs, and ATSDR Costs to be performed or incurred after the

lodging of this Consent Decree, these covenants not to sue are conditioned upon the complete and satisfactory performance by the City of its obligations under this Consent Decree. These covenants not to sue extend only to the City and do not extend to any other person.

76. The covenants not to sue set forth in Paragraph 75 do not pertain to any matters other than those expressly specified in Paragraph 75. The United States and the State also reserve, and this Consent Decree is without prejudice to, all rights against the City with respect to the following:

(1) any liability for Soil, Sediment, and Surface Response Action and Costs;

(2) any liability for Reserved Groundwater Containment Response Action and Costs;

(3) any liability under any federal or state laws other than section 106 and section 107(a) of CERCLA and section 7003 of RCRA and section 22.2 of the Illinois Environmental Protection Act, including but not limited to other sections of RCRA and other environmental statutes;

(4) any liability for damages for injury to, destruction of, or loss of natural resources;

(5) any liability for response costs that have been or may be incurred by trustees for natural resources and which have or may in the future spend funds relating to the Site;

(6) any criminal liability;

(7) any liability of the City arising from the City's

future disposal of hazardous substances at the Site;

(8) any liability for costs incurred by ATSDR in the future for projects at the Site other than the Rockford TCE Subregistry Project with respect to Waste Material that is introduced into groundwater at the Site after the date of lodging of this Consent Decree; and

(9) any liability of the City based on a failure by the City to meet a requirement of this Consent Decree.

77. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the City (1) to perform further Groundwater-Related Response Actions with respect to the Site other than Area 7 of the Site or (2) to reimburse the United States for future Groundwater-Related Response Costs other than for Area 7 of the Site if, prior to certification of completion of the Remedial Action by the City:

(i) conditions at the Site, previously unknown to U.S. EPA, are discovered, or

(ii) information, previously unknown to U.S. EPA, is received in whole or in part,

and these previously unknown conditions or information together with other relevant information indicate that Groundwater-Related Response Action is not protective of human health or the environment. The City reserves all defenses to any action or

claim against it pursuant to this Paragraph.

78. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the City (1) to perform further Groundwater-Related Response Actions with respect to the Site other than Area 7 of the Site or (2) to reimburse the United States for future Groundwater-Related Response Costs other than for Area 7 of the Site if, subsequent to certification of completion of the Remedial Action by the City:

(i) conditions at the Site, previously unknown to U.S. EPA are discovered, or

(ii) information, previously unknown to U.S. EPA is received in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that Groundwater-Related Response Action is not protective of human health or the environment. The City reserves all defenses to any action or claim against it pursuant to this Paragraph.

79. For purposes of Paragraph 77, the information and the conditions known to U.S. EPA shall include only that information and those conditions considered or possessed by employees of U.S. EPA or its authorized contractors as reflected in any information contained in U.S. EPA's file for the Southeast Rockford Groundwater Contamination Site (including the First and Second

Operable Unit RODs and the source control operable units in progress) as of the date of lodging of this Consent Decree. For purposes of Paragraph 78, the information and the conditions known to U.S. EPA shall include only that information and those conditions considered or possessed by employees of U.S. EPA or its authorized contractors as reflected in any information contained in U.S. EPA's file for the Southeast Rockford Groundwater Contamination Site (including the First and Second Operable Unit RODs and the source control operable units in progress) as of the date of Certification of Completion of the Remedial Action, and any information received by U.S. EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action. Within 30 days of the filing of any action or written notice of a claim pursuant to Paragraph 77 or 78 against it the City may, by providing notice in writing, request the employment of a neutral mediator. Any mediation shall not last longer than forty-five (45) days unless extended by written agreement. The United States and the City will divide equally the fees and costs of the mediator. Each party to the dispute will provide a list of five suggested mediators who shall have the qualifications of (a) demonstrated experience, (b) independence, (c) subject matter experience, and (d) lack of actual or apparent bias. The parties to the dispute shall inform the other party of all mediators that are acceptable and the parties to the dispute shall then select a mediator. Any report, findings, recommendations, written

records, or notes prepared by the mediator shall not be binding on any party and shall not be part of the administrative record or admissible in dispute resolution proceedings or any other legal proceeding. Nothing in this Paragraph shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1511-1519.

80. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action seeking to compel the City (1) to perform further Groundwater-Related Response Actions with respect to the Site other than Area 7 of the Site or (2) to reimburse the State for future Groundwater-Related Response Costs other than for Area 7 of the Site, to the extent that U.S. EPA has determined that such response actions required under (1) and (2) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, and to the extent that U.S. EPA is not precluded from compelling such response actions by this Consent Decree, if, prior to certification of completion of the Remedial Action by the City:

(i) conditions at the Site, previously unknown to the State, are discovered, or

(ii) information, previously unknown to the State, is received in whole or in part,

and these previously unknown conditions or information together with other relevant information indicate that Groundwater-Related

Response Action is not protective of human health or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph. The City reserves all defenses to any action or claim against it pursuant to this Paragraph.

81. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action seeking to compel the City (1) to perform further Groundwater-Related Response Actions with respect to the Site other than Area 7 of the Site or (2) to reimburse the State for future Groundwater-Related Response Costs, other than for Area 7 of the Site if, to the extent that U.S. EPA has determined that such response actions required under (1) and (2) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, and to the extent that U.S. EPA is not precluded from compelling such response actions by this Consent Decree, subsequent to certification of completion of the Remedial Action by the City:

(i) conditions at the Site, previously unknown to Illinois EPA are discovered, or

(ii) information, previously unknown to Illinois EPA is received in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that

Groundwater-Related Response Action is not protective of human health or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph. The City reserves all defenses to any action or claim against it pursuant to this Paragraph.

82. For purposes of paragraph 80, the information and the conditions known to Illinois EPA shall include only that information and those conditions considered or possessed by employees of Illinois EPA or its authorized contractors as reflected in any information contained in Illinois EPA's file for the Southeast Rockford Groundwater Contamination Site (including the First and Second Operable Unit RODs and the source control operable units in progress) as of the date of lodging of this Consent Decree. For purposes of paragraph 81, the information and the conditions known to Illinois EPA shall include only that information and those conditions considered or possessed by employees of Illinois EPA or its authorized contractors as reflected in any information contained in Illinois EPA's file for the Southeast Rockford Groundwater Contamination Site (including the First and Second Operable Unit RODs and the source control operable units in progress) as of the date of the Certification of Completion of the Remedial Action, and any information received by Illinois EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action. Within 30 days of the filing of any action or

written notice of a claim pursuant to Paragraph 80 or 81 against the City, the City may, by providing notice in writing, request the employment of a neutral mediator. Any mediation shall not last longer than forty-five (45) days unless extended by written agreement. The State and the City will divide equally the fees and costs of the mediator. Each party to the dispute will provide a list of five suggested mediators who shall have the qualifications of (a) demonstrated experience, (b) independence, (c) subject matter experience, and (d) lack of actual or apparent bias. The parties to the dispute shall inform the other party of all mediators that are acceptable and the parties to the dispute shall then select a mediator. Any report, findings, recommendations, written records, or notes prepared by the mediator shall not be binding on any party and shall not be part of the administrative record or admissible in dispute resolution proceedings or any other legal proceeding.

83. Except as specifically provided in Paragraph 84 of this Consent Decree, the United States and the State covenant not to sue or take administrative action against the City pursuant to sections 106 and 107(a) of CERCLA and section 7003 of RCRA and section 22.2 of the Illinois Environmental Protection Act with respect to Area 7 of the Site. The City hereby certifies to the United States and the State that it has undertaken a good faith review and has no knowledge or information indicating that it has ever sent wastes to Area 7 or is or has been an owner or operator of any part of Area 7.

84. The covenants not to sue set forth in Paragraph 83 do not pertain to any matters other than those expressly specified in Paragraph 83. The United States and the State also reserve, and this Consent Decree is without prejudice to, all rights against the City with respect to the following:

(1) any liability for damages for injury to, destruction of, or loss of natural resources relating to Area 7 of the Site;

(2) any liability for response costs that have been or may be incurred by trustees for natural resources and which have or may in the future spend funds relating to Area 7 of the Site;

(3) any criminal liability;

(4) any liability of the City arising from the City's future disposal of hazardous substances at Area 7 of the Site;

(5) any liability under any federal or state laws other than section 106 and section 107(a) of CERCLA and section 7003 of RCRA and section 22.2 of the Illinois Environmental Protection Act, including but not limited to other sections of RCRA and other environmental statutes;

(6) any liability for Soil, Sediment, and Surface Response Action and Costs, and Reserved Groundwater Containment Response Action and Costs outside of Area 7 of the Site;

(7) any liability for Area 7 in the event that the City's certification in Paragraph 83 about its good faith review and knowledge or information is untrue; and

(8) any liability of the City based on a failure by the

City to meet a requirement of this Consent Decree.

85. Work Takeover. In the event U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, determines that the City has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, U.S. EPA may assume the performance of all or any portions of the Work as U.S. EPA determines necessary after reasonable opportunity for review and comment by Illinois EPA. The City may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 61, to dispute U.S. EPA's determination that takeover of the Work is warranted under this Paragraph. The City shall reimburse the United States and the State for all response costs incurred by the United States and the State that are not inconsistent with the NCP in the event of a takeover of Work by U.S. EPA.

86. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY THE CITY

87. City's Covenant Not to Sue. Subject to the reservations in Paragraph 88, the City covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to the Work, Groundwater-Related

Response Action and Costs, Past Response Costs, Future Oversight Costs and ATSDR Costs or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States or the State, including any department, agency or instrumentality of the United States or the State under CERCLA Sections 107 or 113 related to the Site, or

c. any claims arising out of response activities at the Site, including claims based on U.S. EPA's and the State's selection of response actions, oversight of response activities or approval of plans for such activities.

88. The City's covenant not to sue and agreement in Paragraph 87 shall not apply in the event that the United States or the State brings a cause of action against them pursuant to subparagraphs 76(1-8), 77-82, or 84(1-7) of this Consent Decree, but only to the extent arising from the same cause of action asserted by the United States or the State pursuant to those subparagraphs. The City also reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or

wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on U.S. EPA's selection of response actions, or the oversight or approval of the City's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA

89. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

90. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights

(including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

91. The Parties agree, and by entering this Consent Decree this Court finds, that the City is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. The City agrees not to sue any other person or entity pursuant to CERCLA for matters addressed in this Consent Decree, unless the City is first sued by such person or entity with respect to the Site. For purposes of this Paragraph, the "matters addressed" in this Consent Decree are Groundwater-Related Response Action and Costs, Past Response Costs, and Future Oversight Costs, and ATSDR Costs incurred or to be incurred by the United States, the State, or any other entity with respect to the Site, and any response costs incurred or to be incurred by the United States, the State, or any other entity with respect to Area 7 of the Site.

92. The City agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree it will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

93. The City also agrees that with respect to any suit or

claim for contribution brought against it for matters related to this Consent Decree it will notify in writing the United States and the State within 10 days of service of the complaint on it. In addition, the City shall notify the United States and the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

94. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

XXIV. ACCESS TO INFORMATION

95. The City shall provide to U.S. EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs,

receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. The City shall also make available to U.S. EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

96. a. The City may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA and the State, or if U.S. EPA has notified the City that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to City.

b. The City may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege in lieu of providing documents, it shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of

the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by City. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

97. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents evidencing conditions or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

98. Until 10 years after the City's receipt of U.S. EPA's and Illinois EPA's notification pursuant to Paragraph 46.b of Section XIV (Certification of Completion of the Work), the City shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the City's receipt of U.S. EPA's and Illinois EPA's notification pursuant to Paragraph 46.b of Section XIV (Certification of Completion), the City shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature

or description relating to the performance of the Work.

99. At the conclusion of this document retention period, the City shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, the City shall deliver any such records or documents to U.S. EPA or the State. The City may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege, it shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the City. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

XXVI. NOTICES AND SUBMISSIONS

100. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a

change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, U.S. EPA, the State, and the City, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-3-945

As to the State: (one copy only)

Susan Horn and Beth Wallace
Assistant Attorneys General
Office of the Illinois Attorney General
100 West Randolph St.
Environmental Bureau, 11th Floor
Chicago, IL 60601

As to U.S. EPA:

Thomas Turner
U.S. EPA, Region 5
77 West Jackson Boulevard, C-14 J
Chicago, Illinois 60604

As to Illinois EPA:

Paul Takacs
Project Manager
Illinois Environmental Protection Agency
1021 North Grand Avenue East, P.O. Box 19276
Springfield, Illinois 62794-9276

As to the City:

Robert Nimmo
Water Superintendent
425 E. State St.

Rockford, IL 61104

XXVII. EFFECTIVE DATE

101. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

102. This Court retains jurisdiction over both the subject matter of this Consent Decree and the City for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

103. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A: Second Operable Unit Record of Decision

Appendix B: Map of Interstate Pollution Control Site

Appendix C: Statement of Work

Appendix D: Map of Area 7

XXX. COMMUNITY RELATIONS

104. The City shall propose to U.S. EPA and the State their participation in the community relations plan to be developed by U.S. EPA. U.S. EPA will determine the appropriate role for the City under the Plan. The City shall also cooperate with U.S. EPA and the State in providing information regarding the Work to the public. As requested by U.S. EPA or the State, the City shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by U.S. EPA or the State to explain activities at or relating to the Site.

XXXI. MODIFICATION

105. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of U.S. EPA, after reasonable opportunity for review and comment by Illinois EPA, and the City. All such modifications shall be made in writing.

106. Except as provided in Paragraph 12 ("Modification of the SOW or related Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, the State, the City, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between U.S. EPA, after

providing the State with a reasonable opportunity to review and comment on the proposed modification, and the City.

107. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

108. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The City consents to the entry of this Consent Decree without further notice.

109. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

110. Each undersigned representative of the City, the State, and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party

to this document.

111. The City agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the City in writing that it no longer supports entry of the Consent Decree.

112. The City shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the City with respect to all matters arising under or relating to this Consent Decree. The City hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.


SO ORDERED THIS 8th DAY OF April, 1998.


United States District Judge


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. City of Rockford, relating to the Southeast Rockford Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 12/4/97



LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530




MARY REED
FRANCIS J. BIROS
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

KEITH SEYFERT
Assistant United States Attorney
Northern District of Illinois
308 West State Street
Room 300
Rockford, IL 61101


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United States v. City of Rockford
S.E. Rockford Groundwater
Contamination Superfund Site

FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Date: 10-27-97


WILLIAM E. MUNOZ
Director, Superfund Division
Region 5
U.S. Environmental Protection
Agency
77 West Jackson Blvd.
Chicago, IL 60604

Date: 10-16-97


ANDREW WARREN
KURT N. LINDLAND
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

United States v. City of Rockford
Consent Decree Signature Page

FOR THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN,
Attorney General of the State of

Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

Date: 11/6/97

By: WPS
WILLIAM D. SEITH
Chief, Environmental Bureau
100 W. Randolph St., 11th Fl.
Chicago, IL 60601

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Date: _____

BY: _____
JOSEPH E. SVOBODA
General Counsel
2200 Churchill Road
Springfield, IL 62794-9276

United States v. City of Rockford
Consent Decree Signature Page

FOR THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN,
Attorney General of the State of

Illinois

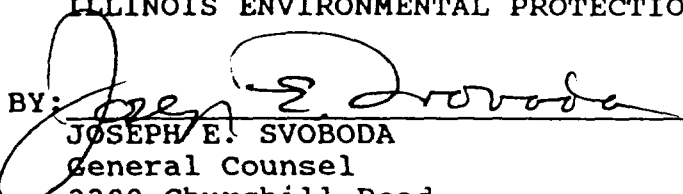
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

Date: _____

By: _____
WILLIAM D. SEITH
Chief, Environmental Bureau
100 W. Randolph St., 11th Fl.
Chicago, IL 60601

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Date: 12/17/97

BY: 
JOSEPH E. SVOBODA
General Counsel
2200 Churchill Road
Springfield, IL 62794-9276

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Rockford, relating to the Southeast Rockford Superfund Site.


FOR THE CITY OF ROCKFORD

Date: October 15, 1997


CHARLES E. BOX

Mayor
425 E. State Street
Rockford, IL 61104

Attest:


RONALD N. SCHULTZ, Legal Director



Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Ronald N. Schultz
Title: Legal Director
Address: 425 E. State Street
Rockford, IL 61104
Tel. Number: (815) 987-5551